

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 17, 2023

CASE NO(S): OLT-22-003176

PROCEEDING COMMENCED UNDER section 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended.

Applicant/Appellant: Zonix Group Inc.
Subject: Request to amend the Official Plan – Failure to adopt the requested amendment
Description: To permit the development of 6-storey and 27-storey residential buildings to contain a total of 533 units
Reference Number: 19 114290
Property Address: 36, 38, 40, 42, 44, 46 & 48 Steeles Avenue East and 37, 39, 41, 43, 45, 47 & 49 Highland Park Avenue
Municipality/UT: Markham/York
OLT Case No: OLT-22-003176
OLT Lead Case No.: OLT-22-003176
OLT Case Name: Zonix Group Inc. v. Markham (City)

PROCEEDING COMMENCED UNDER section 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended.

Applicant/Appellant: Zonix Group Inc.
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description: To permit the development of 6-storey and 27-storey residential buildings to contain a total of 533 units
Reference Number: 19 114290
Property Address: 36, 38, 40, 42, 44, 46 & 48 Steeles Avenue East and 37, 39, 41, 43, 45, 47 & 49 Highland Park Avenue
Municipality/UT: Markham/York
OLT Case No.: OLT-22-003178
OLT Lead Case No.: OLT-22-003176

Heard: September 27, 2023 by Video Hearing

APPEARANCES:**Parties****Counsel**

Zonix Group Inc.

David Bronskill
Rodney Gill (*in absentia*)

City of Markham

Maggie Cheung-Madar

City of Toronto

Adam Ward
Ray Kallio (*in absentia*)**MEMORANDUM OF ORAL DECISION DELIVERED BY A. MASON AND DAVID BROWN ON SEPTEMBER 27, 2023 AND INTERIM ORDER OF THE TRIBUNAL**

[Link to Order](#)**INTRODUCTION AND BACKGROUND**

[1] This matter involves a Settlement Hearing related to appeals brought under s. 22(7) and s. 34(11) of the *Planning Act*, R.S.O. c. P13, as amended (the “Act”), by Zonix Group Inc. (“Applicant/Appellant”) from the failure of the City of Markham (“City”) to make a decision on an Application to Amend the Official Plan and on an Application to Amend the Zoning By-law (together, “Applications”) within the timeframes prescribed by the Act.

[2] The lands that are the subject of the Applications are known municipally as 36, 38, 40, 42, 44, 46 and 48 Steeles Avenue East and 37, 39, 41, 43, 45, 47 and 49 Highland Park Avenue (together, “Subject Property”). The Subject Property is located on the north side of Steeles Avenue East, east of Yonge Street. More specifically, the Subject Lands are bounded by Dudley Avenue on the west, Highland Park Boulevard on the north side, Steeles Avenue East along the southerly side, and by low-density residential properties to the east. The Subject Property is comprised of 14 properties

currently each being occupied by a detached residential dwelling. The Subject Property has an area of 0.92 hectares.

[3] The area directly surrounding the Subject Property to the north and east is characterized low-density detached residential dwellings. To the west, across Dudley Avenue, is a 10-storey apartment building fronting on Steeles Avenue East and low-density detached dwellings fronting on Highland Park Boulevard. The City of Toronto (“Toronto”) is located on the south side of Steeles Avenue East, and the development along the south side of Steeles Avenue East is characterized by low-density residential dwellings.

[4] The Applicant/Appellant filed the Applications with the City on March 5, 2019. The City deemed the Applications complete on March 27, 2019. The Applications were circulated to commenting agencies and, after receiving comments, the Applicant/Appellant resubmitted a revised proposal in May 2021 in response to the comments received. The City held a statutory public meeting on February 15, 2022.

[5] The Applicant/Appellant filed the appeals (“Appeals”) on March 30, 2022.

[6] Prior to the Hearing, the Tribunal was advised that the Parties had negotiated a Settlement and they requested that the Tribunal conduct these proceedings as a Settlement Hearing pursuant to Rule 12 of the Tribunal’s *Rules of Practice and Procedure*.

[7] Counsel for the City confirmed that the Parties have reached a Settlement, and City Council at its meeting held on July 28, 2023 authorized the execution of the confidential Minutes of Settlement in accordance with the Settlement Plans submitted to the Tribunal and marked as Exhibit 2.

[8] The Tribunal convened the proceedings as a Settlement Hearing.

SETTLEMENT PROPOSAL

[9] The Settlement Proposal proposes a 44-storey tower and a 40-storey tower on a six-storey podium with a total gross floor area of 74,467 square metres (“m²”) and a Floor Space Index (“FSI”) of 8.2. The development proposes 1,060 residential units, 510 vehicle parking spaces provided at a parking ratio of 0.48 parking spaces per unit based on 0.38 resident parking spaces per unit and 0.1 visitor parking spaces per unit. A total of 740 bicycle parking spaces are proposed. Driveway access will be provided from both Dudley Avenue and Highland Park Boulevard.

[10] The Settlement Proposal also proposes that a park, having an area of 1,829 m², is to be dedicated to the City, through a stratified conveyance, along the southerly side of Highland Park Boulevard. A privately owned public space (“POPS”) is also proposed along the easterly property edge, comprising an area of 450 m². The Settlement Proposal includes a combined indoor and outdoor amenity area ratio of 4.0 m² per unit.

LEGISLATIVE FRAMEWORK

[11] When considering appeals filed pursuant to s. 22(7) and s. 34(11) of the Act, the Tribunal must have regard to the matters of Provincial interest as set in s. 2 of the Act. Section 3(5) of the Act requires decisions of the Tribunal affecting planning matters to be consistent with the Provincial Policy Statement, 2020 (“PPS”) and, in this case, conform to A Place to Grow; Growth Plan for the Greater Golden Horseshoe, 2020, as amended (“Growth Plan”). The Tribunal must also be satisfied that the Applications conform with the Region of York (“Region”) Official Plan 2022 (“ROP 2022”) and the City Official Plan.

[12] In consideration of the statutory requirements set out above, the Tribunal must be satisfied that the Applications represent good planning and are in the public interest.

SUBMISSIONS AND EVIDENCE

[13] The Tribunal qualified Nick Pileggi, a Registered Professional Planner in the Province of Ontario, to provide opinion evidence in the field of land use planning. Mr. Pileggi's Witness Statement was filed with the Tribunal in support of the Settlement Proposal and marked as Exhibit 1.

[14] Mr. Pileggi proffered that the area context surrounding the Subject Lands is evolving. The City of Vaughan ("Vaughan"), located on the west side of Yonge Street, recently approved the Yonge Steeles Corridor Secondary Plan ("YSCSP") permitting mixed use, high-density, transit-oriented development. Toronto approved the Yonge North Secondary Plan ("YNSP"), providing for mixed-use, high-density, transit-oriented development for the lands south of Steeles Avenue along the Yonge Street corridor, in anticipation of the Yonge North Subway Extension and the proposed subway station to be constructed at Steeles Avenue. In addition, Steeles Avenue is planned as a future higher-order transit corridor with a transitway.

[15] The City Council endorsed the Yonge Corridor Land Use and Built Form Study ("YCLUBF Study") in June of 2022 and Mr. Pileggi advised that the Subject Lands are included in the YCLUBF Study area.

[16] Mr. Pileggi reviewed the densities and building heights contemplated in the Vaughan YSCSP, the Toronto YNSP, and the City YCLUBF Study surrounding the Yonge Street and Steeles Avenue intersection. He advised that, in Vaughan, heights of up to 67 storeys are proposed at the intersection, stepping down as you proceed west away from Yonge Street along Steeles Avenue West. The heights contemplated in Toronto are up to 45 storeys along the Yonge Street corridor, and Mr. Pileggi advised that the YCLUBF Study is planning for heights of 66 storeys at Yonge Street and Steeles Avenue, stepping down as you proceed east along Steeles Avenue East.

[17] Mr. Pileggi reviewed the Settlement Plans and proffered that the two towers— the

westerly tower at 44 storeys and the easterly tower at 40 storeys – represent a decreasing height and density along Steeles Avenue East from the heights proposed at Yonge Street. The Settlement Plans propose a parkland conveyance that represents 20 percent of the gross site area and a POPS that is an additional 4.9 percent of the site area. No residential units are proposed at grade and the areas not utilized to service the building on the ground floor are proposed as amenity space with windows along the street frontages.

[18] In consideration of the PPS, Mr. Pileggi reviewed the relevant policies and opined that the Settlement Proposal is consistent with the PPS. Mr. Pileggi reviewed the applicable policies of the Growth Plan and opined that the Settlement Proposal conforms with the Growth Plan.

[19] The ROP 2022 locates the Subject Lands in the Urban Area and designates the Subject Lands as Community Area on the Land Use Map. This designation provides for a range of uses and is to be the focus of growth. Mr. Pileggi proffered that the ROP 2022 emphasizes transit supportive development and prioritizes active transportation. The Subject Lands are located within a Major Transit Station Area (“MTSA”) which is centered around the future Steeles Subway Station planned along the Yonge Street corridor. Mr. Pileggi opined the intensification contemplated by the Settlement Proposal conforms with the ROP 2022.

[20] Turning to the City Official Plan, 2014 (“2014 OP”), Mr. Pileggi explained that the 2014 OP was approved by Regional Council on June 12, 2014, and was appealed to the Ontario Municipal Board. The majority of appeals have been resolved; however, there remain appeals to certain land use designations and policies and for certain areas in the City that require further planning in the form of a secondary plan. Where no secondary plan is in effect, s. 9 of the 2014 OP refers back to the designations and policies of the former City Official Plan implemented in 1987 (“1987 OP”), which remains in force. The Subject Lands which are included in the area identified for the future

YSCSP, and therefore the 1987 OP applies and further identifies the Subject Lands as being located within the Thornhill Secondary Plan (“TSP”).

[21] Mr. Pileggi proffered that the 1987 OP and the TSP predate the PPS and the Growth Plan and have not been updated to bring them into conformity with the PPS, the Growth Plan, the ROP 2022 nor the 2014 OP. Mr. Pileggi opined that it is unreasonable to apply the policies of the 1987 OP and the TSP to the Settlement Proposal. The YCLUBF Study work completed by the City to date provides the most relevant and current vision of City Council for the planning and policy context for the area and Mr. Pileggi proffered that the Settlement Proposal should be evaluated using the YCLUBF Study context, which contemplates that the Subject Lands will be developed with a residential high-density built form.

[22] Mr. Pileggi reviewed the Settlement Proposal in the context of the 2014 OP Residential High-Rise Designation land use policies as he opined that they are most appropriate and relevant. In consideration of the policies within the 2014 OP, Mr. Pileggi proffered:

- the location of the proposed building along the Steeles Avenue East frontage is appropriate for a consistent massing and continuity of built form planned along Steeles Avenue;
- the Settlement Proposal will create residential intensification adjacent to existing and planned transit as the Subject Property is within a short walking distance to the future Steeles Subway Station at Yonge Street and the ROP designates Steeles Avenue East as a rapid transit corridor;
- the proposed buildings are oriented away from the low-rise residential uses on the north side of Highland Park Boulevard and the proposed park along Highland Park Boulevard and POPS along the easterly boundary

provides an appropriate buffer to the existing residential uses;

- the absence of residential units at grade ensures no privacy impacts for the future residents along the street frontage of the Subject Lands;
- the six-storey podium, the reduced tower floor plates at a maximum of 800 m², together with the tower separation of 25m and the tower orientation, will reduce shadow impacts and ensure that shadows move quickly across the neighbouring low-rise residential neighbourhood to the north; and
- while the upper floors of the proposed towers exceed the 45-degree angular plane recommended in the YCLUBF Study, the built form appropriately reflects the depth of the Subject Property, and the proposed intensification is appropriate to support the Major Transit Station Area designation and along the Major Transit Corridor identified in the ROP.

[23] Mr. Pileggi opined that the Settlement Proposal conforms to the intent and the objectives of the 2014 OP. He further opined that a Secondary Plan is not required for the Settlement Proposal to proceed and that the proposed Official Plan Amendment is appropriate for the Subject Property. Matters related to public realm, urban design, and built form will be more thoroughly addressed through the Site Plan Approval process.

[24] The Tribunal received three Participant Statements and Mr. Pileggi summarized the concerns as relating to urban design, which includes shadow and sunlight impact, compatibility of built form, and concerns related to traffic.

[25] Mr. Pileggi proffered that the Settlement Proposal addresses the Participants concerns through the following:

- The original two-building proposal has been revised to a single-building, two-tower proposal with the building footprint shifted away from Highland Park Drive

and located against Steeles Avenue East.

- A public park is proposed along the Highland Park Boulevard frontage. The location of the proposed park, combined with the width of the interior drive aisle for vehicle access to the buildings, provides a separation distance of over 50 m between the proposed building face to the nearest residential property on the north side of Highland Park Boulevard.
- The reduced podium height of six storeys and the tower floor plate reduction and tower separation combined with the opposing building orientations will mitigate shadow impacts on the neighbouring low-density residential properties.
- Traffic concerns are mitigated by the low parking ratio proposed, which is intended to discourage vehicle dependency and increase reliance on transit and other modes of transportation including active transportation.
- A Transportation Report was prepared in support of the proposed development and lower parking standard.

[26] Counsel for the City confirmed that the City supports the Settlement Proposal and has no objection to the draft conditions submitted by the Applicant/Appellants Counsel for consideration by the Tribunal.

ANALYSIS AND FINDINGS

[27] The Tribunal accepts the uncontroverted *viva voce* evidence and Witness Statement of Mr. Pileggi and finds that the intensification proposed by the Settlement Proposal represents an appropriate optimization of the Subject Lands and public infrastructure, in particular, the existing and planned public transit infrastructure.

[28] The Settlement Proposal proposes a density that is appropriate for the Subject

Property, being well located along the future Steeles Avenue Bus Rapid Transit Way and within a short walking distance of the future Steeles Avenue Subway Station along the Yonge Street corridor. The Settlement Proposal provides additional residential units in an area that is currently well serviced by public transit, and will support future transit infrastructure investments.

[29] The re-orientation of the proposed development as described in the Settlement Plans away from the Highland Park Boulevard frontage, and the creation of a new public park along the north boundary of the Subject Property and the POPS along the east boundary will reduce the impacts with respect to adjacency, shadows, and transition to the surrounding low-rise residential uses.

[30] The Tribunal has considered the matters of Provincial interest as set out in s. 2 of the Act and is satisfied that the approval of the OPA and the ZBA will have regard for such matters, including being an appropriate location for growth, promoting a design that supports public transit, that the Settlement Plans represent a well-designed built form and mitigates greenhouse gas emissions with the reduction of reliance on the automobile.

[31] The Tribunal finds that the Settlement Proposal is consistent with the PPS as it proposes an efficient development and land use pattern that provides an appropriate range and mix of housing types that will meet the needs of current and future residents. The Settlement Proposal represents an integration of land use planning, growth management, transit-supportive development, intensification, and infrastructure planning to achieve cost-effective development pattern that optimizes transit investments and incorporates standards to minimize land consumption and servicing costs.

[32] In consideration of the Growth Plan, the Tribunal finds that the Settlement Proposal supports the achievement of complete communities that are designed to

support healthy and active living by providing compact built form and a mix and range of housing. The Subject Property is located within the “delineated built boundary” and appropriate for intensification that optimizes the use of existing urban land supply.

[33] The Tribunal finds that the Settlement Proposal conforms to the ROP 2022 as it proposes development that will contribute to the creation of complete communities, represents intensification in a compact development pattern, is transit-supportive, and will minimize land consumption and service costs in order to meet density targets set out by the ROP 2022. The ROP 2022 requires that communities be designed to prioritize active transportation, transit-supportive development, and intensification in appropriate locations, and the Tribunal is satisfied that the Settlement Proposal achieves these objectives.

[34] The Tribunal accepts the opinions proffered by Mr. Pileggi in respect to the 2014 OP and the 1987 OP as it relates to their applicability of current Official Plan policies pertaining to the Subject Lands. The 2014 OP identifies the Subject Lands as being located within the future Yonge Street Corridor Secondary Plan area and that, until the approval of that Secondary Plan, the provisions of the 1987 OP and the TSP will continue to apply. The Tribunal acknowledges that the planning policy framework context has changed significantly since the approval of the 1987 OP and the TSP and that these documents predate the PPS and the Growth Plan and do not contemplate the extension of the Subway service along Yonge Street through the City.

[35] Mr. Pileggi’s evidence refers the Tribunal to the YCLUBF Study for an indication of the current City Council direction in respect to the form of development contemplated for the subject and surrounding lands. The corridor along Steeles Avenue East is expected to be characterized by high-density residential developments. Applying the high-rise residential policies of the 2014 OP is appropriate and the Tribunal finds that the Settlement Proposal conforms to the intent and objectives of these policies.

[36] The Tribunal finds that the Settlement Proposal will contribute to good urban design, economic vitality, attractive streetscape, health of the community, and provide vibrant public space as required by the 2014 OP. Further, the Settlement Proposal represents a compatible built form with high-quality urban design and sustainable development that is compact and walkable to higher-order transit and services.

[37] Notwithstanding the maximum height and density permitted in the 2014 OP, the Tribunal finds that the proposed heights of 40 and 44 storeys and the proposed FSI of 8.0, as described in the Settlement Proposal, is contemplated by the YCLUBF Study, and are consistent with the heights and densities planned in Vaughan and Toronto surrounding the intersection of Yonge Street and Steeles Avenue. The Tribunal also notes that the Subject Lands are located in an MTSA as designated in the ROP 2022. The Growth Plan directs the greatest intensification towards MTSA's in order to, among other matters, maximize transit infrastructure investment.

[38] The Tribunal is satisfied that the concerns raised by the Participants are addressed through the Settlement Proposal with the increased separation provided to the low-density residential uses across the proposed public park on the Subject Property, the revised building design addressing massing with the reduced tower floor plate size, tower separation, tower orientation and the six-storey podium creating an appropriate transition and mitigating shadow impacts. Traffic impacts in the low-density residential neighbourhood will be addressed by the proposed parking ratio that will encourage the reduction of vehicle use and increase reliance on public transit and active transportation modes.

[39] In consideration of the above, the Tribunal finds that the Settlement Proposal represents good planning and is in the public interest.

[40] The Tribunal allows the Appeals and approves the OPA and ZBA in principle subject to Conditions and subject to the City providing the final form of the OPA and

ZBA instruments for approval by the Tribunal.

ORDER

[41] **THE TRIBUNAL ORDERS THAT** the appeals be allowed, in part, on an interim basis, and that the proposed Official Plan Amendment and Zoning By-Law Amendment to reflect the Settlement Proposal as described in the Settlement Plans included in Exhibit 2, which, for greater clarity, are the Architectural Plans prepared by Arcadis Architects (Canada) Inc. under Project No. 140764 having a revision date of September 14, 2023, are hereby approved in principle.

[42] **AND THE TRIBUNAL ORDERS THAT** the Tribunal will withhold issuance of its Final Order contingent upon confirmation of the following pre-requisite matters:

- a. That the Tribunal has received, and approved, the Official Plan Amendment and Zoning By-law Amendment in a final form, confirmed satisfactory by the City Solicitor of the City of Markham and the City of Toronto;
- b. That the Tribunal shall be in receipt of confirmation from the City of Markham Solicitor that the Applicant/Appellant has submitted any updated studies and/or reports in respect of the revised plans and that the Applicant/Appellant has entered into any agreements required to secure any required upgrades or improvements to the existing Municipality infrastructure, should they be required, all to the satisfaction of City of Markham;
- c. That the Tribunal shall be in receipt of confirmation from the City Solicitor for the City of Toronto that:
 - i. The Applicant/Appellant has submitted updated reports, to the satisfaction of the Chief Engineer and Executive Director, City of

Toronto, to address the matters in the February 14, 2022 memorandum from Engineering and Construction Services, City of Toronto (**Exhibit 6**); and,

- ii. Where updated servicing reports identify required upgrades to City of Toronto services the Owner shall enter into agreement(s) for the construction of any such improvements to such services, as required, at no cost to the City of Toronto and to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, City of Toronto.

[43] If the Parties do not submit the final draft of the Official Plan Amendment and final draft of the Zoning By-law Amendment, and provide confirmation that the contingent pre-requisites to the issuance of the Final Order set out in paragraph 42 above have been satisfied, and do not request the issuance of the Final Order, by **Tuesday, April 30, 2024**, the Applicant/Appellant and the City of Markham shall provide a written Status Report to the Tribunal by that date as to the timing of the expected confirmation and submission of the final form of the draft Official Plan Amendment and Zoning By-law Amendment and request for issuance of the Final Order by the Tribunal. In the event that the Tribunal fails to receive the required Status Report, and/or in the event that the contingent pre-requisites are not satisfied by the date indicated above or by such other deadline as the Tribunal may impose, the Tribunal may then dismiss the appeal.

[44] The Panel will remain seized for the purposes of reviewing and approving the final draft of the Official Plan Amendment and the Zoning By-law Amendment and the issuance of the Final Order.

[45] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine the additional timelines and deadline for the submission of the final form of the instrument and the satisfaction of the contingent pre-

requisites to the issuance of the Final Order.

“A. Mason”

A. MASON
MEMBER

“David Brown”

DAVID BROWN
MEMBER

Ontario Land Tribunal

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